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March 10, 2022

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MEMO ENDORSED

VIA ECF

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Honorable Laura Taylor Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

**Re: Conklin v. U.S. Immigration and Customs Enforcement, et al.,
20-CV-8178 (LTS)**

Dear Judge Swain:

This law firm represents Plaintiff, Patrick Conklin (“Plaintiff” or “Mr. Conklin”), in the above-referenced action.

On Monday, March 7, 2022, Plaintiff electronically filed his opposition to Defendants’ Motion for Summary Judgment in this matter. The Declaration of Marshall Bellovin, Esq.(the “Declaration”) in Opposition to Defendants’ Motion for Summary Judgment was electronically filed as Docket Number 72.

Several Exhibits annexed to the Declaration in Opposition to Defendants’ Motion for Summary Judgment are true and correct copies of Plaintiffs’ medical records. Specifically, the exhibits are numbered as follows: Exhibit 8, Exhibit 9, Exhibit 18, Exhibit 19, Exhibit 47, Exhibit 49, Exhibit 50 and Exhibit 54.

Plaintiff respectfully submits that because said exhibits contain Plaintiff’s medical information concerning diagnosis and treatment, said exhibits should have been filed under seal. We apologize to the Court for this error and request that the Court issue an Order directing that these Exhibits be sealed.

Sealing is appropriate notwithstanding the presumption of access discussed by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006), in light of the privacy interests of individuals in their medical records. See, e.g., *Barnwell v. FCI Danbury*, No. 3:10-CV-01301 (DJS), 2011 WL 5330215, at *5 (D. Conn. Nov. 3, 2011) (noting a rebuttable presumption of openness of court filings, but granting motion to seal in light of federal law’s treatment of such records as confidential pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. 104-191 (1996)). Courts in this District have permitted the sealing of medical records, even if specific details relating to the individual’s health

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appear on the record. See, e.g., *United States v. Needham*, 460 F.Supp.3d 323, 324 n.1 (S.D.N.Y. 2020); *United States v. Estevez*, No. 18 Cr. 669 (JPO), 2020 WL 1911207, at *1 (S.D.N.Y. Apr. 20, 2020).

We thank the Court for its time and attention to this matter. Should the Court have any questions or require additional information or materials, please contact the undersigned.

Respectfully submitted,

s/Edward M. Tobin
MARSHALL BELLOVIN (MB 5508)

cc: Jessica Rosenbaum, Esq. (via ECF)

Application granted to the extent that Plaintiff may file under seal Exhibits 8, 9, 18, 19, 47, 48, 49, and 52 of the declaration of Marshall B. Bellovin filed on March 7, 2022 (docket entry no. 72). Plaintiff is reminded that section 6 of this Court's Electronic Case Filing Rules and Instructions contains directions for electronically filing motions to seal. Plaintiff is further directed to file a copy of the Bellovin declaration, omitting the sealed exhibits, on the public docket. The Clerk of Court is respectfully directed to restrict access to docket entry no. 72 (including its attachments) to the selected party only viewing level. DE#73 resolved.

SO ORDERED.

Dated: March 10, 2022

/s/ Laura Taylor Swain, Chief U.S.D.J.